

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**224****CRWP No.1970 of 2023****Date of Decision : 22.09.2023**

Shyam Kumar @ Sameer

....Petitioner

VERSUS

State of Haryana and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Randeep Singh Dhull, Advocate for the petitioner.

Ms. Priyanka Sadar, AAG Haryana.

ALKA SARIN, J. (Oral)

1. This is a petition under Articles 226 and 227 of the Constitution of India read with Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (hereinafter referred to as the 'Act') for quashing of order dated 25.01.2023 (Annexure P-1) passed by the Divisional Commissioner, Division Karnal, District Karnal vide which the grant of parole to the petitioner has been denied.

2. Learned counsel for the petitioner would contend that the order of the Divisional Commissioner, Karnal merely states that the reason for the urgent work has not been confirmed and hence his case was not recommended for release of the petitioner.

3. Reply by way of affidavit of Sh. Amit Kumar, Superintendent of Prison, District Prison, Karnal filed by learned State counsel is taken on record wherein it has been stated in para 6 that agreeing with the report of the District Magistrate, Farukhabad and Superintendent of Police,

Farukhabad, the application for release of the petitioner on parole has been rejected by the Commissioner, Karnal Division, Karnal in view of public interest as per Section 8 of the Act.

4. Section 8 of the Act reads as under:-

“Notwithstanding anything contained in this Act, no convicted prisoner shall be entitled to be released under this Act if, on the report of the District Magistrate or the Deputy Commissioner of Police or the Superintendent of Police or otherwise, the State Government or the competent authority is satisfied that his release is likely to endanger the security of the State or the maintenance of public order or cause reasonable apprehension of breach of peace.”

5. Perusal of the order rejecting the grant of parole reveals that it is not in consonance with Section 8 of the Act inasmuch as there is no report that the petitioner, if released on parole, is likely to endanger the security of the State or maintenance of public order or cause reasonable apprehension of breach of peace. It is trite that parole cannot be sought as a matter of right, however, cogent reasons need to be given for rejection of the parole.

6. Hon’ble Supreme Court in the case of **Asfaq vs. State of Rajasthan & Ors. [2017 (15) SCC 55]** also dealt with the issue of provisions of parole and furlough and held that a humanistic approach is to be adopted against those who are lodged in jails. The relevant portion reads thus :

“15) The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested

interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

16) Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.

17) Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims.

Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.”

7. The order declining parole being without any sustainable reasons cannot be upheld. Accordingly, the present petition is allowed. The order dated 25.01.2023 passed by the Divisional Commissioner, Division Karnal, District Karnal is set aside. The authorities concerned are directed to re-consider the case of the petitioner for parole in accordance with law within a period of two months from today.

8. Disposed off. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

22.09.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO